Filed 8/17/10 L.B. v. Superior Court CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION ONE

L.B., Petitioner, v. SUPERIOR COURT OF SAN FRANCISCO CITY AND COUNTY, Respondent, SAN FRANCISCO HUMAN SERVICES AGENCY et al. Real Parties in Interest.	A128683 (San Francisco City & County Super. Ct. Nos. JD08-3334, JD08-3335, JD08-3335A)

L.B. (Mother) challenges an order of the San Francisco City and County Superior Court, Juvenile Division, made May 21, 2010, in which the juvenile court, following a contested 12-month permanency hearing, terminated Mother's reunification services and set a hearing under Welfare and Institutions Code section 366.26[1] to select a permanent plan for the minors K.L. (born Feb. 2003), A.G. (born Sept. 2006), and W.G. (born May 2008). Mother objects to the finding that the Agency offered or provided her with reasonable services, and the finding that there was a substantial risk of detriment to the safety and well-being of the minors if they were returned to her custody and care. As

[1] All further statutory references are to the Welfare and Institutions Code.

discussed below, we conclude substantial evidence supports these findings, and deny Mother's petition for an extraordinary writ on the merits.[2]

BACKGROUND

On November 21, 2008, the San Francisco Human Services Agency (Agency) detained the minors, and four days later filed a petition under section 300, subdivisions (b), (g), and (j). The petition, as later amended, alleged as to Mother that she "[might] have a substance abuse problem which requires assessment," and that she "[was] unable to provide adequate care [for] and supervision [of the minors] due to her being fatigued and overwhelmed with trying to care for three children at the shelter."

The juvenile court sustained the foregoing allegations on January 21, 2009. On this date, the court also ordered the Agency to provide Mother with reunification services, and adopted a case plan for Mother that required her to submit to a psychological evaluation, to engage in individual therapy and group counseling, complete a parenting education course, and obtain and maintain suitable housing.

In a report completed in early July 2009 for the six-month status review hearing, the assigned case worker recommended an additional six months of services for Mother, although she noted that Mother had "sporadically engaged in services" and her progress towards reunification appeared to be "diminishing." The case worker was "hopeful that the mother will complete the psychological evaluation, which may assist all with a treatment plan for the mother." At the conclusion of the six-month hearing on July 22, the juvenile court continued the minors in out-of-home custody and directed that Mother continue to receive services.

In an addendum report completed in early September 2009, the case worker stated Mother had completed her psychological evaluation. The evaluation recommended that Mother address her depression and emotional issues in therapy, that she continue her

[2] Section 366.26, subdivision (*l*)(1)(A), bars review on appeal if the aggrieved party has not made a timely writ challenge to an order setting a hearing for selection and implementation of a permanent plan. The statute also encourages the appellate court to determine all such writ petitions on their merits, as we do here. (§ 366.26, subd. (*l*)(4)(B).)

treatment for substance abuse at IRIS Center, and that she receive parenting skills training and learn "adequate coping strategies." The case worker also reported that Mother had "worked extremely close with the [Agency] and other service providers" on the issue of housing, and as a result had been "awarded with a brand new, three bedroom, two bathroom apartment" provided by Mercy Housing. Noting "[t]he children's return to the mother [was] essential" to Mother's securing the apartment, the case worker proposed placing the minors in Mother's care under a family maintenance plan. The case worker stated she had discussed with Mother the "risk" the Agency was taking in recommending this plan, because Mother's compliance with services had so far been "minimal." Mother, for her part, expressed a "commitment to fully engage in services, once her housing is secure." The recommended family maintenance plan called for Mother to remain under the care of a qualified mental health professional and comply with any recommendations for therapy or medication, that she ensure K.L.'s regular attendance at therapy, that she successfully complete a parenting education program, and that she complete an outpatient drug treatment program. On September 11, the juvenile court ordered that the minors be returned to Mother's care and adopted the proposed family maintenance plan.

On January 11, 2010, the Agency filed a supplemental petition under section 387. A detention report filed the next day stated Mother had failed to engage in services since September 2009, when the minors were placed in her care, and had failed since that time to ensure that K.L. attended her therapy. The case worker further reported that K.L. was missing school and had fallen behind in her studies, that Mother had left A.G. in the care of the maternal grandmother, who lived in San Joaquin County, despite the case worker's determination that the minors should remain together as a sibling group, and that Mother had allowed W.G., the alleged father of the two younger minors, to visit in the home, although Mother was aware he was not to have contact with the children due to past allegations of physical and emotional abuse. The court, on January 13, entered a formal detention order based on the supplemental petition.

In a report prepared for the 12-month permanency hearing, signed March 17, 2010, the case worker recommended that the juvenile court terminate Mother's reunification services and set the matter for hearing under section 366.26. The report noted Mother had not complied with her case plan requirements adopted in September 2009. At the outset of this hearing, held May 21, 2010, counsel for the Agency pointed out that it was, in effect, a combined 12-month permanency hearing and 18-month permanency review hearing.[3] At the conclusion of the hearing, the court followed the Agency's recommendations of terminating Mother's services and setting the matter for a hearing under section 366.26.

Mother's petition followed. (§ 366.26, subd. (*l*).)

DISCUSSION

I. *Substantial Risk of Detriment*

At the 12-month permanency hearing and the 18-month permanency review hearing, the juvenile court must return the minor to the physical custody of his or her parent, unless it finds by a preponderance of evidence that return of the child would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. (§§ 366.21, subd. (f), 366.22, subd. (a).) The court in this instance made that finding. Mother contends it is not supported by the evidence.

We review the challenged finding by examining the record to determine whether it is supported by substantial evidence. In doing so, we resolve any conflicts and indulge all reasonable inferences in favor of the court's finding. (See *In re Kristin W.* (1990) 222 Cal.App.3d 234, 251.)

"The failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (§§ 366.21, subd. (f), 366.22, subd. (a).) Thus, the juvenile court

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[3] The permanency review hearing is required to be held no later than 18 months after the date the minors are initially removed from their parents' physical custody, which was, in this case, November 21, 2008, exactly 18 months before the hearing. (See § 366.22, subd. (a).)

concluded in this case that return of the minors would be detrimental due to "Mother's failure to participate meaningfully in her reunification services."

The case worker's report admitted at the hearing stated she had discussed Mother's case plan with her on January 13, 2010, informing her "of the need for her to engage in services." As noted above, her plan required that she remain under the care and follow the recommendations of a qualified mental health professional, that she ensure K.L.'s attendance at therapy, that she complete a parenting education program, and that she complete an outpatient drug treatment program, including testing if it were deemed appropriate. The case worker deemed testing appropriate and arranged for Mother to test at Ashbury Clinic. She received only one report from that clinic, however, indicating that Mother had submitted to testing on February 11 and at that time had tested positive for opiates. The case worker gave Mother a referral for therapeutic services at Foster Care Mental Health, but Mother identified IRIS Center as her service provider for mental health services, as well as substance abuse treatment and testing. The case worker had no authorization to obtain information from IRIS Center, and was not aware of Mother engaging in services there.[4] Mother had reported previously that she intended to re-enroll in outpatient drug treatment at IRIS Center, but had not provided any certification of completion of the program. Similarly, Mother had reported that she was working with IRIS Center "in regards to a conflict regarding her completion" of a parenting class, but had not provided a certification of completion. Mother was not in direct contact with the case worker for significant periods. Following the hearing on January 13, Mother left several messages "after hours," but failed to respond to a message from the case worker requesting a meeting. The case worker testified at the hearing on May 21 that she eventually had three meetings with Mother in April and May, at which she again tried to persuade Mother "to engage in services and referrals such as Homeless Prenatal, substance abuse testing and services." She further stated that her recommendation to

[4] At the hearing, the case worker testified that she had asked Mother to sign a written authorization for her to obtain information from IRIS center, but Mother did not do so.

terminate services was based on the Mother's having received 18 months of services, including "intense reunification [and] family maintenance services," and she had been "secured with housing for the children and services were at her disposal that she didn't take advantage of."[5]

Viewing the foregoing evidence in the light most favorable to the juvenile court's ruling (see, e.g., *In re Monica C.* (1995) 31 Cal.App.4th 296, 306 (*Monica C.*)), we conclude that it provides substantial evidence that Mother failed to attend regularly and make substantive progress in her court-ordered treatment programs. Consequently, substantial evidence supports the finding that return of the minors to Mother's care would be detrimental.

II. *Reasonable Services*

At the 12-month permanency hearing, the juvenile court may set the matter for a section 366.26 hearing only if it finds by clear and convincing evidence that reasonable services were offered or provided to the parents. (§ 366.21, subd. (g)(2).)[6] Here, the court found by clear and convincing evidence that "reasonable efforts [were] provided or offered which were designed to aid the parents to overcome the problems which led to the initial removal and continued custody of these children."

Mother challenges this finding, again urging it is not supported by substantial evidence. In Mother's view, it was evident by the time of the six-month status review hearing that she needed additional services as a parent "suffering from mental health difficulties" and one "who was formerly brought up through the dependency system."[7]

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[5] More specifically, the case worker testified that the housing secured for Mother included on-site supportive services that Mother did not utilize.

[6] On the other hand, at the 18-month permanency review hearing the court is required simply to determine whether reasonable services were offered or provided to the parents. (§ 366.22, subd. (a).) It is not prohibited from setting a section 366.26 hearing if it finds reasonable services were *not* offered or provided. (*Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1511−1512.)

[7] Mother also urges that a delay in providing her with transportation vouchers contributed to her missing therapeutic visits from January until April. The case worker,

In reviewing this finding, our sole task is to determine whether substantial evidence shows that the Agency made a good faith effort to provide reasonable services. (*Monica C., supra*, 31 Cal.App.4th at p. 306.) This review standard applies even though the trial court was required to utilize the higher standard of clear and convincing evidence. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) In applying this standard, we view the evidence in the light most favorable to the juvenile court's ruling, resolving conflicts and indulging all reasonable inferences in favor of the finding. (See *In re Julie M.* (1999) 69 Cal.App.4th 41, 46.)

We have summarized above the evidence relating to Mother's compliance, or lack of compliance, with her case plan requirements. In our view, this same evidence shows considerable effort on the part of the case worker to offer or provide Mother with services reasonably designed to assist Mother in her goal to reunify with her children, and to maintain reasonable contact with Mother. (See *In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) Mother does not specify what additional services the Agency should have offered or provided. In any event, the standard is not whether the agency could have provided better services in an ideal world, but whether the services were reasonable under the circumstances. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) We conclude substantial evidence in the record supports the finding that the Agency offered or provided Mother with reasonable services.

DISPOSITION

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Cal. Rules of Ct., rules 8.454(a), 8.490(b)(3).)

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however, testified she made repeated attempts to contact Mother about this issue, and relayed through a therapist that she could provide Mother with transportation assistance if Mother contacted her.

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Marchiano, P.J.

We concur:

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Margulies, J.

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Banke, J.